Ghazali bin Arifin v Ahmad bin Bakar & Ors

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 21 OF 1985
KC VOHRAH J
30 OCTOBER 1991

Land Law *— Sale and purchase of property — Declaration that defendants (registered owners) are holding the land as bare trustee for plaintiff*

Evidence *— Attestation — Presumption — Dispute as to genuineness of signatures in the sale and purchase agreement of the purported vendor and purchaser who have both died — Court to consider the evidence external and internal of document to decide whether to presume proper signatures and execution — Evidence Act 1950 s 90*

Limitation *— Action for transfer of ownership of land — Land alleged to be transacted in 1955 — Purchaser in occupation of land and title deed in his possession — Equitable owner of land not affected by limitation*

The plaintiff is the son of Ariffin bin Osman and the administrator of his estate. The defendants are the beneficiaries of one Bakar bin Awang Ahmad's estate. Both Ariffin and Bakar have died. The plaintiff pleaded that his father, Ariffin, purchased from Bakar 1/3 of Bakar's undivided share, ie 1/3 of 4461/4609th share of the land held under SP 9920 Lot 355, Mukim Bukit Pinang, Kota Setar, Kedah. The land was alleged to have been purchased pursuant to a sale and purchase agreement dated according to the Muslim calendar, 11.6.1374 which corresponds with the Gregorian calendar dated 3 February 1955. The defendants are now registered owners of the said share. The plaintiff seeks a declaration that the defendants are bare trustees of the said share and for an order that the defendants do execute a transfer of the said share to him as administrator of the estate of Ariffin bin Osman, deceased.

Held, allowing the plaintiff's claim:

(1) The purported sale and purchase agreement was tendered in court. The contents of the document show that there was a sale by the first defendant's father of his share of the land for $800 on 11.6.1374 (Muslim calendar) (3 February 1955, Gregorian calendar) to the plaintiff's father. The court had no hesitation in accepting that the document was officially stamped at the Kota Star Stamp Office on 3 February 1955 and that the document has been proved to be more than 20 years old.

(2) Having regard to s 90 of the Evidence Act 1950, the court may presume the genuineness of the signatures of the purported vendor and purchaser and the thumbprint of the purported person who witnessed the execution of the agreement. The said document was in the custody of the plaintiff's father and the court was satisfied that the document was executed by the plaintiff's father and the first defendant's father as shown in the agreement, considering the document does appear to have an honest face.

(3) There is one feature in the document which needs further investigation, ie the date on which it was stamped was the very same date on which the alleged vendor of the land, died. If there is a dispute as to the genuineness of such documents (having regard to s 90 of the Evidence Act 1950), it is necessary for the courts to consider the evidence external and internal of the document in order to enable them to decide whether in any particular case they should or should not presume proper signature and execution.

(4) There is no evidence as to the time when Bakar died. And there is nothing to indicate that he could not have signed the document because he had died earlier. On the other hand, the evidence shows that the purported purchaser of the land, Ariffin, had the document of title in respect of the land in his possession and was in occupation of the land until he himself died in 1984. The inference is that having regard to the common course of natural events, Bakar must have passed it to him.

(5) The court accepted that the signatures and the thumbprint appearing in the document are those of the persons who are named therein and who purportedly made them and that the agreement was properly executed.

(6) The contention by the defendants that the action is statute-barred cannot stand because the evidence on the balance of probabilities shows that the plaintiff's father was the equitable owner of the land; and 'what is required now is to clothe the equitable estate with a legal title'.

[Bahasa Malaysia summary

Plaintif adalah anak lelaki Ariffin bin Osman dan pentadbir harta pusakanya. Defendan adalah benefisiari harta pusaka seorang bernama Bakar bin Awang Ahmad. Kedua-dua Ariffin dan Bakar telah meninggal dunia. Plaintif membuat pliding bahawa bapanya, Ariffin, telah membeli daripada Bakar 1/3 syer tidak terbahagi kepunyaan Bakar, iaitu 1/3 daripada 4461/4609 syer tanah yang dipegang di bawah SP 9920 Lot 355, Mukim Bukit Pinang, Kota Setar, Kedah. Tanah itu didakwa telah dibeli mengikut satu perjanjian jual-beli bertarikh 11.6.1374 mengikut kalendar Islam, yang bersamaan dengan 3 Februari 1955 kalendar Gregorian. Defendan kini merupakan tuanpunya berdaftar syer tersebut. Plaintif menuntut satu deklarasi bahawa defendan adalah 'bare trustee' syer tersebut dan satu perintah supaya defendan melaksanakan satu pemindahan milik syer tersebut kepadanya sebagai pentadbir harta pusaka Ariffin bin Osman, si mati.

Diputuskan, membenarkan tuntutan plaintif itu:

(1) Perjanjian jual-beli yang didakwa itu telah dikemukakan di mahkamah. Kandungan dokumen itu menunjukkan bahawa terdapat jualan oleh bapa defendan pertama akan syernya atas tanah itu untuk $800 pada 11.6.1374 (kalendar Islam) (3 Februari 1955, kalendar Gregorian) kepada bapa plaintif. Mahkamah menerima tanpa berlengah-lengah lagi bahawa dokumen itu telah

disetem secara rasmi di Pejabat Setem Kota Star pada 3 Februari 1955 dan bahawa dokumen itu telah dibuktikan sebagai lebih daripada 20 tahun usianya. A

(2) Memandangkan s 90 Akta Keterangan 1950, mahkamah boleh membuat anggapan tentang kesejatian tandatangan penjual dan pembeli yang didakwa itu dan cap ibu jari orang yang didakwa menyaksikan pelaksanaan perjanjian itu. Dokumen tersebut berada di dalam jagaan bapa plaintif dan mahkamah berpuashati bahawa dokumen itu telah dilaksanakan oleh bapa plaintif dan bapa defendan pertama seperti yang ditunjukkan dalam perjanjian itu, memandangkan yang dokumen itu memang kelihatan jujur. B

(3) Terdapat satu perkara di dalam dokumen itu yang memerlukan penyelidikan lanjut, iaitu tarikh apabila dokumen itu disetemkan adalah tarikh yang sama apabila penjual tanah yang didakwa itu telah meninggal dunia. Jika terdapat pertikaian tentang kesejatian dokumen sedemikian (memandangkan s 90 Akta Keterangan 1950), adalah wajib bagi mahkamah mempertimbangkan keterangan di luar dan di dalam dokumen itu supaya mahkamah boleh membuat keputusan sama ada, dalam mana-mana kes tertentu, ia harus atau tidak harus membuat anggapan tentang tandatangan dan pelaksanaan yang betul. C D

(4) Tidak ada keterangan tentang masa apabila Bakar meninggal dunia. Dan tidak ada apa-apa yang menunjukkan bahawa beliau tidak mungkin telah menandatangani dokumen itu kerana beliau telah meninggal dunia lebih awal. Sebaliknya, keterangan menunjukkan bahawa pembeli yang didakwa itu, Ariffin, mempunyai dokumen hakmilik berkenaan tanah itu sehingga beliau meninggal dunia pada 1984. Inferens yang harus dibuat adalah mengikut susunan kejadian yang biasa, Bakar patut telah menyerahkan dokumen hakmilik itu kepadanya. E F

(5) Mahkamah menerima bahawa tandatangan dan cap ibu jari yang terdapat di dalam dokumen itu adalah kepunyaan orang-orang yang dinamakan di sana dan yang didakwa telah membuat tandatangan dan cap itu dan bahawa perjanjian itu telah dilaksanakan dengan betul. G

(6) Hujah defendan bahawa tindakan ini dihalang oleh statut tidak boleh diterima kerana atas imbangan kebarangkalian, keterangan menunjukkan bahawa bapa plaintif adalah tuanpunya tanah itu di sisi ekuiti; dan 'what is required now is to clothe the equitable estate with a legal title'.] H

Cases referred to

1 *Mansukh Panachand Shah v Trikambhai Icchabhai Patel* AIR 1930 Bom 39 (folld)

2 *Shafigunnissa v Shaban Ali Khan* (1904) 26 All 581 (folld) I

3 *Munah v Fatimah* [1968] 1 MLJ 54 (folld)

4 *Tengku Mariab bte Sultan Sulaiman v Halimah bte Abdullah* [1980] 2 MLJ 234 (folld)

Legislation referred to
Evidence Act 1950 s 90

Zainal Rashid (*Ahmad Farid & Associates*) for the plaintiff.
Nadarajan s/o Arumugam (*Nadarajan & Co*) for the defendants.

Cur Adv Vult

KC Vohrah J: In this case it is pleaded by the plaintiff that his father Ariffin bin Osman purchased from one Bakar bin Awang Ahmad a third of Bakar's undivided share, ie 1/3 of 4461/4609th share of the land held under SP 9920, Lot 355, Mukim Bukit Pinang, Kota Setar, Kedah. The defendants are presently registered as owners of the said share. The plaintiff seeks a declaration that the defendants are bare trustees of the said share and for an order that the defendants do execute a transfer of the said share to him as administrator of the estate of Ariffin bin Osman, deceased.

The land was alleged to have been purchased pursuant to a sale and purchase agreement dated, according to the Muslim calendar, 11 June 1374. This date corresponds with the Gregorian calendar date 3 February 1955.

Both Ariffin bin Osman and Bakar bin Awang Ahmad have died. The plaintiff is the son of Ariffin and the administrator of his estate. The fifth defendant, widow, and the other defendants, the children, of Bakar, are beneficiaries of Bakar's estate and are the registered owners of the said share in the land.

The purported sale and purchase agreement was tendered in court. The words 'Kota Star Stamp Office' (in English) are imprinted on two 25¢ stamps. The date '3.2.55', and, below it, the word 'PAID' (in English) appear as perforations on the said two 25¢ stamps affixed to the right top side of the document. I have no hesitation in accepting that the document was officially stamped at the Kota Star Stamp Office on 3 February 1955 and I am satisfied that the document has been proved to be more than 20 years old.

Having regard to s 90 of the Evidence Act 1950 the court may presume the genuineness of the signatures of the purported vendor and purchaser and the thumbprint of the purported person who witnessed the execution of the agreement. One would expect such a document to have been in the custody of the plaintiff's father. It was; the plaintiff said that he took it from his father's belongings. I should be satisfied that the document was executed by the plaintiff's father and the first defendant's father as shown in the agreement, considering that the document does appear to have an honest face.

I have to point out, however, that there is one feature in the document which needs further investigation. It relates to the date on which the document was allegedly executed, the same date that it was stamped, ie 3 February 1955. The point is that this date is the very same date on which the alleged vendor of the land, the first defendant's father, Bakar bin Awang Ahmad, died. This fact appears as a statement of fact under para 9 of the

statement of claim of the plaintiff. What should I make of this? Section 90 of our Evidence Act 1950 is substantially similar to s 90 of the Indian Evidence Act though the presumption therein is in respect of documents 30 years old. If there is a dispute as to the genuineness of such documents (having regard to s 90 of both the Malaysian and Indian Acts) one needs to heed what Madgavkar J said at p 40 in *Mansukh Panachand Shah v Trikambhai Icchabhai*,[1] after he had referred to the Privy Council case of *Shafiqunnissa v Shaban Ali Khan*:[2] '... it is necessary, therefore, for the courts to consider the evidence external and internal of the document in order to enable them to decide whether in any particular case they should or should not presume proper signature and execution.'

As I have stated earlier the document has an honest face and there is only the question of the date. Is it too much of a coincidence that the vendor died on the day that the document was executed? There is, however, no evidence as to the time when Bakar died. And there is nothing to indicate that he could not have signed the document because he had died earlier. On the other hand the evidence shows that the purported purchaser of the land, Ariffin, had the document of title in respect of the land in his possession until he himself died in 1984. The inference is that having regard to the common course of natural events Bakar must have passed it to him. Then again there was evidence from both the plaintiff's witnesses, 76 year old Mat bin Jasin (PW2), and the third defendant, Che Ani bin Bakar (DW3), that Ariffin was in occupation of the land after Bakar had died. PW2 said that he saw Ariffin clearing the land and he also said that Ariffin told him that he had bought the land. Further there is no evidence of any claim to the said share in the land by any of the two wives of Bakar or any of his children until 28 years had passed from the date of death of Bakar. This was when the first defendant at the age of 45 years applied for and was granted letters of administration by the Collector of Land Revenue in respect of his father's estate. He was granted letters of administration in 1983. And the evidence was that the alleged purchaser Ariffin was still alive at that time but there is no clear evidence whether he or his son, the plaintiff, was aware of the application for the said letters of administration by the first defendant. The plaintiff was not questioned about this and my view is that in all probability neither Ariffin bin Osman nor the plaintiff knew about the application. What is clear is that the plaintiff was requested in writing by the first defendant on 9 February 1985 to bring the land title to the Land Office Kota Star on 23 February 1985 at 10am after the letters of administration had been granted to the first defendant in 1983.

Bearing all these in mind I think that the suspicion that the document may be a tainted document because of the coincidence of the date of execution of the agreement and the date of death of Bakar bin Awang Ahmad is unfounded. And I can and do accept that the signatures and the thumbprint appearing in the document are those of the persons who are named therein and who purportedly made them and that the agreement was properly executed.

The contents of the document show that there was a sale by the first defendant's father of his share of the land for $800 on 11.6.1374 (Muslim calendar) (3 February 1955, Gregorian calendar) to the plaintiff's father.

A The terms of the agreement as translated into English by a certified translator of the High Court are as follows —

> Document of Sale of Land
> Price $800
>
> On 11.6.1374
> B I, Bakar bin Awang Ahmad, (I/C 397428) who reside at Kampoung Teluk, Mukim of Bukit Pinang, make this document to be given to Ariffin bin Osman (I/C 394387) who also resides at Kampong Telok as future evidence in that I, Bakar do possess a share in the kampung land in Surat Putus No 9920, Lot No 355, 1R 392J 20S/F in area in the Mukim of Bukit Pinang, District of Kota Setar. I, Bakar have sold an extent of 1/3 of my share to Ariffin bin Osman at a price of
> C $800 (Ringgit Eight Hundred) only to him as per sketch plan on the reverse side of this document which is marked 'A' and at the time when I, Bakar set my hand in this document I have received in full to Ariffin and I, Bakar have also handed over the land, to the extent of this 1/3 share to Ariffin to enter, possess and control and collect all its yield at the time when I, Bakar bring the co-owners in this land to give their consent at that time I, Bakar admit to execute a transfer at the Land
> D Office to the extent of 1/3 share of this land to Ariffin without any breach whatsoever. We, the two parties set our hands hereunder in the presence of a witness.
>
> Sgd
> Bakar bin Awang Ahmad
>
> E Sgd
> Ariffin bin Osman
>
> RTP of Daud bin Lebai Man
> (I/C 393259 — Right thumb).

F The evidence adduced on behalf of the defendants have failed to show that Bakar did not sell 1/3 of his share of the land to the plaintiff's father. In fact the evidence of the first, second and fourth defendants did not show whether or not there was a such sale. And the evidence, adverted to earlier, shows that the plaintiff's father was in occupation of the land till his death and that the document of title to the land was in his possession till his death.
G The evidence on the balance of probabilities shows that the plaintiff's father was the equitable owner of the land; and 'what is required now is to clothe the equitable estate with a legal title' (per Raja Azlan Shah J (as his Majesty then was) in *Munah v Fatimah*[3] at p 55. The defence contends, however, that the action is statute-barred.

H In *Tengku Mariah bte Sultan Sulaiman v Halimah bte Abdullah*[4] the contention too was that the action by the plaintiff was statute-barred but Syed Othman FJ, delivering the judgment of the Federal Court, at p 235 said:

> In our view the respondent's action is not affected by limitation by reason of her having been in possession of the land from the time of purchase, and the present
> I case fits squarely with the principle laid down by Raja Azlan Shah J (as he then was) in *Munah v Fatimah* where he said:
>
> > 'The legal position is that there is an ordinary contract for the sale of land, ... Relying on the contract the plaintiff went into occupation and did such acts

as were necessary and relevant to show that she was in possession. She never got off the land. As from that time, it seems to me, that she was the equitable owner of the said land. What is required now is to clothe the equitable estate with a legal title. She therefore seeks the aid of this court. In my opinion she is well entitled to the relief she claims.'

In dealing with the contention by the vendor that the action was statute-barred (as in the present case), Raja Azlan Shah J following his earlier decision in *Kersah La'Usin v Sikin Menan* [1966] 2 MLJ 20 relied on the English authority, *Williams v Greatrex* [1957] 1 WLR 31 where Denning LJ (as he then was) said at p 36:

'... once the purchaser went into possession of the land having the contractual right to be there, he not only had an equity to be there, but also the benefit of a contract to sell him these two plots. That was not only an equity: it was an equitable interest in the land. He was in a sense the equitable owner of the land. So long as he was in possession of the land, he does not lose his rights simply by not proceeding at once for specific performance.'

This principle has been adopted by this court in *Othman & Anor v Mek* [1972] 2 MLJ 158.

Thus the contention that the action by the plaintiff is statute-barred cannot stand. In all the circumstances the plaintiff succeeds in his claim. The court declares that defendants are bare trustees of the said 1/3 of 4461/4609th undivided share in the land comprised in SP No 9920, Lot 355, Mukim Bukit Pinang, Kota Setar, Kedah and are therefore bound to convey the same to the plaintiff, and orders that the defendants execute a legal valid and registerable transfer of the said undivided share in the said piece of land in favour of the plaintiff as the administrator of the estate of Ariffin bin Osman failing which the senior assistant registrar is empowered to sign the memorandum of transfer on behalf of the defendants in favour of the plaintiff. Costs to the plaintiff.

Claim allowed.

Reported by Neoh Lay Choo